



**Attorney General
Betty D. Montgomery**

December 22, 1998

Office of the Secretary
Magalie Roman Salas
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-A325
Washington, DC 20554

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DEC 23 1998

FCC MAIL ROOM

Re: *In the Matter of The Joint Application for
Consent for Transfer of Control to Bell Atlantic
Corporation from GTE Corporation, CC Docket
No. 98-184.*

Dear Ms. Salas

Enclosed, please find the original and thirteen copies of the Comments of the Public Utilities Commission of Ohio in the above captioned matter.

Please return one stamped copy in the enclosed self-addressed stamped envelope.

Thank you for your assistance in this matter.

Respectfully submitted,


Steven T. Nourse

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cc: ITS
Chief, Policy and Program Planning
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
The Joint Application for Consent)	CC Docket No. 98-184
for Transfer of Control to Bell)	
Atlantic Corporation from GTE)	
Corporation.)	

REPLY COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF OHIO

INTRODUCTION

On July 24, 1998, Bell Atlantic Corporation (Bell Atlantic) and GTE Corporation (GTE) filed joint applications under Section 214 and 310(d) of the Communications Act. The joint applications request the Federal Communications Commission (FCC) approval of the transfer of control to Bell Atlantic of licenses and authorizations controlled or requested by GTE or its affiliates or subsidiaries. After the proposed merger, GTE would become a wholly owned subsidiary of Bell Atlantic. On October 8, 1998, the FCC released a public notice (notice) inviting comments on the proposed merger. Reply comments concerning the proposed merger are due at the FCC on December 23, 1998. In accordance with this procedural schedule, the Public Utilities Commission of Ohio (PUCO or Ohio Commission) hereby submits its reply comments on this matter.

DISCUSSION

Ohio Revised Code requires the PUCO to assure that the GTE/Bell Atlantic merger promotes the public convenience and results in adequate service at reasonable rates. On October 2, 1998, the joint applicants petitioned the PUCO to approve their merger in the State of Ohio *In the Matter of the Joint Application of Bell Atlantic Corporation and GTE Corporation for Consent and Approval of a Change of Control*, Case No. 98-1398-TP-AMT.

At the PUCO's November 4, 1998 open public meeting, representatives of GTE and Bell Atlantic made a presentation before the members of the Ohio Commission on the merits of the proposed merger. Opponents to the proposed merger were also provided an opportunity to make presentations at that same public meeting. Additionally, on October 15, 1998, in our 98-1398-TP-AMT proceeding, the PUCO also invited public comment from interested persons on the proposed merger. Specifically, the Ohio Commission invited comments from interested stakeholders before we can determine if the planned merger will promote the public convenience and will result in the provision of adequate service for a reasonable rate, rental, or toll to consumers consistent with the directives of the Ohio Revised Code. The PUCO noted in its Entry requesting comments that our review of the filings will determine the nature of any hearing to be held on this matter. Comments responding to our October 15, 1998, entry were due on or before November 5, 1998. Reply comments were due on November 20, 1998.

On December 22, 1998, the PUCO issued its decision calling for an evidentiary hearing on the proposed GTE/Bell Atlantic merger. Our decision also identifies the issues that the Ohio Commission intends to address at our hearing. Attached to these comments is the PUCO's December 22, 1998 decision. As further progress is made in this investigation and future decisions are issued, the Ohio Commission or its Staff will update the FCC. That is, the PUCO will forward to the FCC in its CC Docket 98-184 investigation, the PUCO's intrastate decision(s) concerning the GTE/Bell Atlantic merger as they are issued.

CONCLUSION

In closing, the PUCO would like to thank the FCC for the opportunity to submit these reply comments.

Respectfully submitted,

Betty D. Montgomery
Attorney General



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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application of)
Bell Atlantic Corporation and GTE)
Corporation for Consent and Approval) Case No. 98-1398-TP-AMT
of a Change in Control.)

ENTRY

The Commission finds:

- (1) On October 2, 1998, Bell Atlantic Corporation (Bell Atlantic) and GTE Corporation (GTE) filed an application seeking approval of a change in ownership whereby GTE will become a wholly-owned subsidiary of Bell Atlantic. As a result of this transaction, Bell Atlantic will acquire indirect control of GTE North Incorporated (GTE North), a domestic telephone company as defined in Section 4905.402, Revised Code.
- (2) On October 15, 1998, the Commission issued an entry in this case suspending discovery, scheduling a prehearing conference, and ordering all interested persons to file comments regarding merger-related issues that they believe should be addressed by the Commission when evaluating the merger. The Commission also stated that, after a review of the comments, the Commission would establish the time frames and procedures for any hearing in this matter.
- (3) A number of comments and reply comments were filed in this case. We have reviewed the comments and conclude that, in order to evaluate whether the proposed merger will promote the public convenience and result in the provision of adequate service for a reasonable rate, certain issues should be evaluated.
- (4) In the past, this Commission has stated that the goals of competition, diversity, and consumer choice should be evaluated when considering whether an application is in the public convenience. *In the Matter of the Application of Time Warner Communications of Ohio, L.P. and Time Warner AxS for a Certificate of Public Convenience and Necessity to Provide Direct and Resold Exchange Services, Including Local Exchange and Dialtone Services*, Case No. 94-1695-TP-ACE (August 24, 1995), Opinion and Order at 15. We agree that this application requires us to evaluate com-

petition, diversity, and consumer choice. However, the proposed merger raises several other important concerns as well. The proposed merger must "promote" the public convenience and result in the provision of adequate service for a reasonable rate.

- (5) After a review of the extensive comments and the wide array of issues addressed, we feel the need to appropriately define the scope of the issues to be addressed at the hearing to avoid both discovery and the hearing becoming unmanageable and duplicative of other dockets. Accordingly, we intend that the hearing will be limited to those issues which could be affected by, or have a direct nexus to, the proposed merger. Upon consideration of the comments, and subject to any further issues identified by staff or the Commission in the hearing process, at this point, we limit the issues for discovery and the hearing to those set forth below. We direct the joint applicants, as well as the intervenors, to address the following issues in their testimony:

- (a) OPERATIONS SUPPORT SYSTEMS (OSS):

The joint applicants' filing raises the question of the treatment of OSS both during the transition period when the corporate reorganization will occur as a result of the merger and thereafter, when the company intends to operate as a single entity. Adequate OSS is critical to effective competition. Accordingly, the joint applicants need to explain what their plans are to address OSS on a merged basis. Will the applicants' adoption of each company's "best practices" benefit the provision of OSS and how? Will the fact that the joint applicants maintain different OSS delay or impede the provision of OSS on a nondiscriminatory basis? Will the applicants be utilizing manual or electronic interfacing for OSS with new entrant carriers? Furthermore, specifically, what improvements are planned to OSS, and when will they be implemented. Both the joint applicants and the intervenors are also requested to address what safeguards should be established by the Commission, if any, to ensure improvement in OSS processing by the

merged entity and avoidance of potential diminution in service as the merged entity begins to operate as a single company.

- (b) **QUALITY OF SERVICE:** A merger by definition involves a corporate reorganization, changes in management reporting, and centralization of operations and decision-making. As pointed out by the intervenors, the merger of the applicants will create the largest local exchange company in the country with over 63 million access lines. Therefore, the Commission wishes to insure that the size of the new entity does not create the potential for the diminution of service quality both for the competitors and the end users, but rather results in an improvement of service quality and infrastructure. Furthermore, the joint applicants state that as a result of this merger Bell Atlantic will be better able to enter new markets throughout the country. The joint applicants' need to specifically address how they can assure that the merged company's entering into new markets throughout the nation will not result in the diminution of service quality to Ohio customers. In light of the joint applicants' statement that the merger will result in a consolidation and elimination of management function, they should address how this reduction will affect the service quality of the Ohio customers. The joint applicants must specify and show examples of how the implementation of the companies' "best practices" will affect service quality in Ohio. The Commission would ask the joint applicants and the intervenors to suggest any benchmarks or different means of service quality enforcement that may be appropriate, if any, other than the Commission's Minimum Telephone Service Standards (MTSS). The parties should also address whether the Commission has adequate tools to measure the overall level of performance of the merged entity in Ohio and, if not, what tools

it may need to be able to do so. For example, while the MTSS includes a customer-driven system of individual credits, are they sufficient to allow the Commission to get the whole picture of the level of service quality of the merged entity in Ohio or are additional reporting tools needed? Furthermore, how will the merged entity implement the mandate that new entrant carriers may obtain recourse from the underlying carrier for service quality infractions?

- (c) **CARRIER-TO-CARRIER ACTIVITIES:** There is little explanation in the application before us as to how the merger will increase the level of competition both in-region and out-of-region, thus, promoting the public convenience and necessity in Ohio. The joint applicants need to provide the Commission with better assurances as to how competition would be improved as a result of the merger. Will the fact that Bell Atlantic must comply with the requirements in Section 271 of the Telecommunications Act of 1996 (1996 Act) prior to obtaining interLATA relief benefit Ohio and, if so, how? Moreover, the parties should make recommendations on how the Commission should address contingencies or otherwise promote effective competition in-region and out-of-region, particularly for residential and small business customers. Should the Commission "leverage" the level of interconnection and unbundling the joint applicants receive out of region by requiring that same level of service to be provided in region? Should the Commission require a framework for residential and small business customers similar to that proposed in New York and Pennsylvania? How will the merged entity address requests for collocation from new entrants? The Commission's intent is to determine whether a more defined framework would ensure the development of competition for residential and small business customers in

GTE's current Ohio region, as well as outside of GTE's current Ohio region. The joint applicants should address their specific plans for interfacing with competitors to ensure the smooth provision of interconnection and resold services under the 1996 Act and Ohio law. What will the merged entity's position be regarding the current pending court actions involving interconnection agreements in Ohio, as well as the position regarding the need for Commission approval relative to negotiated interconnection agreements and subsequent amendments. The joint applicants need to commit to alternative dispute resolution procedures, using the Commission staff, which avoid undue litigation and delay tactics achieved through litigation. Proposals to address these matters are requested from the joint applicants and other parties.

- (d) **MARKET POWER:** One of the key issues in this and any merger of this size is whether the merged entrant has such increased market power as to effectively control prices and eliminate the development of effective competition. Given the size of the new entity and the joint applicants' "one stop shop" strategy for all of a customer's telecommunications services, this concern is heightened. Regulation can provide structural tools to mitigate market power and allow the development of effective competition. The parties should address and analyze whether the proposed merger significantly increases the joint applicants' market power and what mechanism should be utilized to measure the new entity's market power. If a certain level of market power is shown, what measures should the joint applicants undertake to address any concerns?
- (e) **COST SAVINGS:** Throughout the application the joint applicants refer to the synergies which would be realized as a result of the

merger. The joint applicants must address how such synergies, combined with the results of GTE's most recent earnings report, will benefit Ohio consumers.

- (f) **INFRASTRUCTURE:** The new merged entity, spread over multiple states, will have to make capital investment decisions on the deployment of infrastructure. In the past, the Commission has had concerns about GTE's deployment of infrastructure throughout its entire service territory in Ohio. The joint applicants will need to address specifically what steps they will take to ensure that the infrastructure throughout GTE's current service territory in Ohio is not only in compliance with existing Commission policy and requirements, but will also be sufficient to meet subscribers' future needs. The joint applicants also need to share their plans and goals for increasing the number of advanced services available in all of GTE's Ohio exchanges. Such availability is essential for all of GTE North's customers to enjoy the same level of service. Furthermore, given the plans to enter other markets throughout the United States, the joint applicants must address what steps they will take to ensure that the needs of Ohio are not subordinated to those of the other markets in which they wish to serve.
- (g) **IN-STATE PRESENCE:** The joint applicants need to explain their plans for preserving the existing in-state corporate presence of GTE and, in particular, the level of autonomy and local decision-making which is key to serving local customers. Along those same lines, the joint applicants need to address how their regulatory relationships will ensure that the particular needs of Ohio, as defined by the Commission, are not subordinated to the merged entity's desire for multi-state uniformity.

- (h) BOOKS AND RECORDS: The joint applicants need to address the issue of Commission access to necessary books and records among many GTE affiliated companies providing services to or receiving services from GTE, or otherwise operating in markets in Ohio, to ensure that the Commission can carry out its regulatory responsibilities.
 - (i) AFFILIATES: Both Bell Atlantic and GTE have affiliates that are certified to provide interexchange carrier services throughout Ohio. After the merger, how will these affiliates be aligned and does Bell Atlantic's Section 271 obligations under the 1996 Act have any impact on how these affiliates will be treated? How will the merged entity abide by the restrictions set forth in GTE Long Distance's certification case (96-252-CT-ACE)? How will marketing be handled for the affiliated interexchange entities of the joint applicants? How will the merged entity abide by the affiliated transaction provisions provided for in Case No. 95-845-TP-COI. (*In the Matter of the Commission Investigation Relative to Establishment of Local Exchange Competition and Other Competitive Issues*)
- (6) The Commission staff is instructed to analyze and evaluate the application filed in this matter in light of the above issues. The staff shall file a proposal by Friday, January 29, 1999, and inform the Commission whether, from staff's perspective, it appears that the proposed merger will promote the public convenience and result in the provision of adequate service for a reasonable rate.
- (7) Between October 13, 1998 and November 20, 1998, the following entities filed motions to intervene in this case:
- Ohio Consumers' Counsel (OCC)
 - AT&T Communications of Ohio, Inc. (AT&T)
 - Time Warner Telecom of Ohio, L.P. (Time Warner)
 - United Telephone Company of Ohio (United)
 - Sprint Communications Company L.P. (Sprint)
 - ICG Telecom Group, Inc. (ICG)

CoreComm Newco, Inc. (CoreComm)
Telecommunications Resellers Association (TRA)
Ohio Cable Telecommunications Association (OCTA)
MCI WorldCom (MCI)
NEXTLINK Ohio, Inc. (NEXTLINK).

In conjunction with their motions to intervene, OCC and AT&T included motions for a hearing. The motions to intervene may be quickly summarized as follows:

- (a) Competitive local exchange carriers are concerned that the proposed merger will impact their current and future carrier-to-carrier relationship with GTE North including, but not limited to, carrier interface issues such as the availability, on a nondiscriminatory basis, of network elements and services. In addition, these entities are uncertain as to whether competition will be advanced or reduced as a result of the proposed merger.
- (b) Cable entities alleged that the proposed merger will impact them as both customers (regarding pole attachments for cable service) and potential competitors of GTE North (relative to both telecommunication and cable services). The companies are concerned that the proposed merger must comport with both state and federal law.
- (c) Competitive telecommunication service providers are concerned that the proposed merger will not comply with current Commission orders and that the proposed merger will impact their carrier-to-carrier relationship and their ability to access the local network. These companies are also concerned as to whether competition of interexchange services will continue to develop as a result of the proposed merger.
- (d) OCC, on behalf of Ohio residential customers, is concerned with the impact of

the proposed merger on efforts to bring competition to the Ohio residential market. OCC also questioned the impact of the proposed merger on local phone rates and service quality.

- (8) On November 5, 1998 and December 7, 1998, GTE and Bell Atlantic jointly filed responses to the submitted motions to intervene. The joint applicants contend that their application satisfies the requirements of Section 4905.402, Revised Code. In the event that intervention is granted, joint applicants contend that it should be limited to those specific issues identified by the Commission.
- (9) It is clear from the motions to intervene that various interests are involved, including customers of GTE North, competitors of GTE North, and entities who interconnect with GTE North in order to provide their services. All of these entities allege that the proposed merger could or will impact their interests. Further, many of the movants note that they are not adequately represented by the joint applicants, that their participation will not unduly delay this proceeding, and that they will contribute to the resolution of this proceeding. Upon review of the motions to intervene by the above-listed entities, we find that they are reasonable and should be granted.
- (10) Furthermore, we believe that it is appropriate at this time to open discovery in this matter. However, discovery is limited to any matter, not privileged, which is relevant to the issues set forth in Finding 5 above. We believe that an expedited time frame for responding to certain discovery requests (interrogatories, requests for production of documents, and requests for admission) is appropriate for the purpose of proceeding with this case in a timely manner. Therefore, responses to interrogatories, requests for production of documents, and requests for admission should be served within 10 calendar days after receipt of the written discovery request. The parties are reminded of the rule regarding computation of time in Rule 4901-1-07, Ohio Administrative Code, under which three days are added to the prescribed period of time when a pleading or other paper is served by mail. The parties are encouraged to make arrangements for personal delivery (rather than U.S. mail delivery) of discovery requests and responses.

- ...
- (11) Also, as noted above, motions for a hearing have been filed in this case by AT&T and OCC. In addition, Time Warner and OCTA, in their motions to intervene, suggested that a hearing be held.

In the requests for a hearing, OCC and AT&T note that this proposed merger could result in the creation of one of the largest telecommunications providers in the world and this request is a most significant regulatory matter. They argue that such a transaction cannot adequately be evaluated by simply reviewing the application submitted by the joint applicants. OCC and AT&T state that the issues raised in this matter warrant an evidentiary hearing in order to determine if the proposed merger will comply with existing laws and policies.

- (12) In light of our determination above regarding the scope of this proceeding, we determine that an evidentiary hearing is appropriate and should be limited to the issues we have identified in Finding 5. The evidentiary hearing shall begin at 10:00 a.m., on Monday, March 8, 1999, at the offices of the Commission.
- (13) Consistent with the procedures developed in Case No. 98-1082-TP-AMT (*In the Matter of the Joint Application of SBC Communications, Inc., SBC Delaware Inc., Ameritech Corporation, and Ameritech Ohio for Consent and Approval of a Change of Control*), all ex parte communications will be prohibited. Although permitted under Section 4903.081, Revised Code, we will not entertain ex parte communications requests during the pendency of this case.
- (14) Finally, we find it appropriate to make several other procedural rulings in this case:
- (a) - A discovery cut-off date is reasonable. The last date upon which a party may serve a written discovery request shall be Friday, February 19, 1999.
 - (b) All responses to any future motions shall be filed and served within seven calendar days of the date that the motion is filed with the Commission. The three-day mailing rule

will not apply for the purpose of extending the seven-day service requirement. Unless otherwise specified, no replies will be permitted. Service of all pleadings and prefiled testimony should occur in a manner appropriate to allow the parties to comply with the provisions of this entry.

- (c) Any direct, expert testimony to be presented by the joint applicants should be filed on or before Monday, January 25, 1999.
 - (d) Any direct, expert testimony to be presented by any other party to this proceeding should be filed on or before Monday, February 8, 1999.
 - (e) Intervenors should submit their list of intended expert and non-expert witnesses on or before Monday, February 1, 1999. If intervenors do not intend to call expert witnesses, this should be indicated as well.
 - (f) Joint applicants should submit their list of intended non-expert witnesses on or before Monday, February 1, 1999. If no non-expert witnesses are expected to be called, this should be reflected as well.
 - (g) The prehearing conference previously postponed in this matter is rescheduled for Friday, January 15, 1999, at 1:30 p.m., at the offices of the Commission.
- (15) With regard to Edgemont's Neighborhood Coalition's request that this application be considered pursuant to Sections 4905.49 and 4905.491, Revised Code, the parties to this proceeding may address the applicability of Sections 4905.49 and 4905.491, Revised Code, in their briefs at the conclusion of the hearing.

It is, therefore,

ORDERED, That the Commission's staff analyze and evaluate the application filed in this case in light of the issues set forth in Finding 5 and file a proposal by Friday

January 29, 1999. In its proposal, the staff shall inform the Commission whether it appears that the proposed merger will promote the public convenience and result in the provision of adequate service for a reasonable rate. It is, further,

ORDERED, That, in accordance with Finding 9 above, all outstanding motions to intervene are granted. It is, further,

ORDERED, That discovery is now permitted, but limited to the issues identified in this entry in Finding 5. It is, further,

ORDERED, That the responses to interrogatories, requests for production of documents, and requests for admissions should be served within 10 calendar days after receipt of the written discovery request. The last date upon which a party may serve a discovery request shall be February 19, 1999. It is, further,

ORDERED, That all responses to any future motions shall be filed and served within seven calendar days of the date that the motion is filed with the Commission in accordance with Finding 14. It is, further,

ORDERED, That the Commission will not entertain ex parte communications requests during the pendency of this case. It is, further,

ORDERED, That the prehearing conference is rescheduled for Friday, January 15, 1999, at 1:30 p.m., at the offices of the Commission. It is, further,

ORDERED, That the evidentiary hearing shall be limited, as discussed in Finding 12, and shall begin at 10:00 a.m., on March 8, 1999, at the offices of the Commission. It is, further,

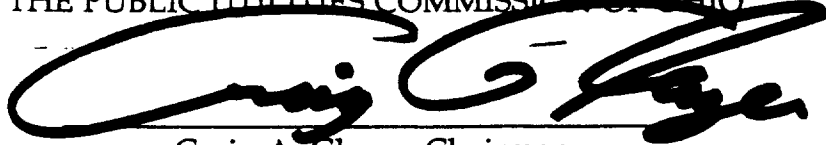
ORDERED, That any direct, expert testimony to be presented by the joint applicants should be filed on or before Monday, January 25, 1999. It is, further,

ORDERED, That any direct, expert testimony to be presented by any other party should be filed on or before Monday, February 8, 1999. It is, further,

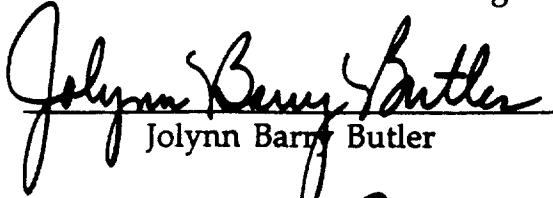
ORDERED, That the witness and non-expert witness lists be submitted in accordance with Finding 14. It is, further,

ORDERED, That a copy of this entry be served upon Bell Atlantic, GTE Corporation, GTE North, all interveners, and any interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Craig A. Glazer, Chairman

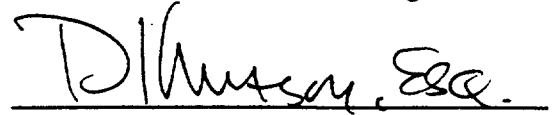


Jolynn Barry Butler



Judith A. Jones

Ronda Hartman Fergus



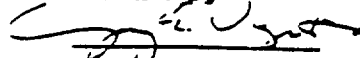
Donald L. Mason

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Gary E. Vigorito
Secretary